Arkansas Municipal League

Municipal Finance and Budgeting Workshop

(5 Hour Core Certification Course)

September 2017
BUDGET LAW

Mark R. Hayes
Director of Legal Services
Arkansas Municipal League
(501) 978-6102
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THE SHALLS...

On or before December 1 of each year, **the mayor of all cities and incorporated towns** having the mayor-council form of government *shall submit* to the governing body of the city or town, for its approval or disapproval, a proposed budget for operation of the city or town from January 1 to December 31 of the forthcoming year.

Under this subchapter, the governing body of the municipality shall, on or before February 1 of each year, adopt a budget by ordinance or resolution for operation of the city or town.

(a) The *approval* by the municipal governing body of the budget under this subchapter *shall*, for the purposes of the budget from time to time *amount to an appropriation* of funds which are lawfully applicable to the items therein contained.

(b) The governing body **may alter or revise** the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, **subject to the following exceptions:**

(SEE NEXT SLIDE...ALSO, PURPOSE MEANS PUBLIC PURPOSE!)

(1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;

(ILLEGAL EXACTIONS!!!)

(2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.

(CONTRACT LAWSUITS!!!)
Opinion 2002-268:

“It is my opinion that municipalities may not formulate their budgets to end on January 31 of each year rather than December 31”

Citing one of our *shall* statutes Ark. Code Ann. § 14-58-201

“...the mayor ...shall submit to the governing body of the city or town...a proposed budget for operation of the city or town from *January 1 to December 31* of the forthcoming year.”
Opinion 2002-268:

Question 3 - Is there a conflict between A.C.A. § 14-58-201, which requires a budget period from January 1 to December 31, and A.C.A. § 14-58-202, which allows until February 1 for the annual budget to be adopted?

“It is my opinion that rather than conflicting, these two provisions simply permit a situation in which the city would be required to operate without a permanent budget for a limited time.”
This conclusion, of course, raises the question of how the city is to operate during the time period between December 31 and February 1. During that time period, the city must operate by way of specific city council action for expenditures. Such specific city council action can take the form of simply adopting the previous year's budget on a temporary basis, or can be applied to individual expenditures.
In my opinion, the city council's general authority over the city's fiscal affairs, see A.C.A. § 14-43-502, and the council's general power of appropriation, see A.C.A. § 14-58-203, provide a sufficient basis for its authority to operate the city by way of specific action for expenditures during that limited period (JANUARY!). (AND...see next slide)
Although this issue has not been addressed by the Arkansas Supreme Court, at least one court of another jurisdiction that has addressed the issue has adopted this approach. See *Wilson v. Dawson*, 590 So.2d 263 (Ala. 1991) (city council's statutory authority to control city's finances gave it authority to approve expenditures in absence of valid budget).
14-43-313. City clerks and attorneys generally.

“The city clerks and the city attorneys in cities of the first class shall …receive such salary as is prescribed by ordinance in each of these cities.”

14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. (first class only per (a))

(c) The city clerk and city treasurer, or city clerk-treasurer…shall receive a salary as is prescribed by ordinance in each of these cities.

Cities of the second class and incorporated towns…lucky you!
MAYOR: Report, report, report!


I suggest monthly financial reports.

What do you do?

Monthly, weekly…

The better informed the council is, the better the budget.

(and don’t forget the shalls: submit, submit, submit)
PASS THE BUDGET! SHALL, SHALL, SHALL!!

- Be well informed: read the financial statements early and often.
- Ask the mayor for specific department needs.
- Look at long term plans and needs.
- Meet and study long before the date of passage.
In a city of the first class, the mayor or his duly-authorized representative may approve for payment out of funds previously appropriated for that purpose, or disapprove, any bills, debts, or liabilities asserted as claims against the city.

The municipal governing body shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of such bills, debts, or liabilities exceeding that amount shall require the confirmation of the governing body.

Ark. Code Ann. § 14-58-305. (Home Rule: likely all cities and towns can do this)
Limits on Mayor’s Spending Authority

- § 14-55-204 – appropriations require a majority vote of the council.

- § 14-58-203 – the budget is an appropriation.
So if it hasn’t been appropriated...

- … *Then it shouldn’t be spent.*
- **AGAIN: NO APPROPRIATION; NO SPENDING**
- If it got spent anyway, amend the budget before the End of Year.
- If you don’t do it by the End of the Year, do it ASAP!
So basically...

... The budget (or possibly some other form of appropriation) sets the parameters for what the Mayor may spend.
THE ROLE OF THE CLERK/RECORDER/TREASURER
THE ROLE OF THE CLERK/RECORER/TREASURER

- SUPPORT, RECORD-KEEPING AND CHECKS AND BALANCES!
- The Clerk/Recorder/Treasurer Handbook
- The AML Handbook.
- Others:
ORDINANCE OR RESOLUTION?
SAMPLE
Resolution for the Adoption of the Municipal Budget

Resolution No._____

A RESOLUTION PROVIDING FOR THE ADOPTION OF A BUDGET FOR THE CITY (OR TOWN) OF______, ARKANSAS, FOR THE TWELVE (12) MONTHS BEGINNING JANUARY 1, 20__ AND ENDING DECEMBER 31, 20__ APPROPRIATING MONEY FOR EACH ITEM OF EXPENDITURE THEREIN PROVIDED FOR, AND FOR OTHER PURPOSES.

WHEREAS, the City (or Town) Council has made a comprehensive study and review of the proposed budget submitted by the mayor, and;

WHEREAS, it is the finding and conclusion of the City (or Town) Council that the schedules and exhibits of anticipated revenues and expenditures for the calendar year appear to be as accurate as possible for budgetary purposes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY (OR TOWN) COUNCIL OF______, ARKANSAS:

Section 1. This resolution shall be known as the budget resolution for the City (or Town) of______, Arkansas, for the twelve (12) month period beginning January 1, 20__ and ending December 31, 20__. The attached budget, incorporated herein as if set out word for word and figure for figure, reflects estimated revenues and expenditures as set forth on the succeeding pages.

Section 2. The respective funds for each item of expenditure proposed in the budget for 20__ are hereby approved and adopted for the operation of the City (or Town) of______, Arkansas, by the City (or Town) Council on this date and constitute an appropriation of funds which are lawfully applicable to the items contained within the budget. This budget may be altered or revised by action of this governing body and

1 NOTE: If this resolution is used as presented it must include the budget document. The resolution should be at the beginning of the budget document.

2 Because the Arkansas Municipal League ("AML") cannot anticipate when every city (or town) will pass its budget, as an option the following emergency clause is included in this footnote. This language should be added to the resolution if an emergency is to be declared:

A. After footnote 2 add: DECLARING AN EMERGENCY

B. After Section 4 add: Section 5. WHEREAS, the efficient operation of municipal government requires that a budget be planned and adopted by the governing body, and that without a budget the city (or town) may not pay its bills, debts or liabilities; now, therefore, an emergency is hereby declared to exist and this resolution being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval.
14-58-101. Audit by independent accountant. (every municipality!)

(a) The audit or agreed-upon procedures engagement of every municipality shall be made by the Arkansas Legislative Audit or other independent persons licensed and in good standing to practice accounting by the Arkansas State Board of Public Accountancy, to be selected by the governing body of the municipality.

14-58-307. Annual audit. (First Class)

In cities of the first class, the municipal governing body shall have the financial affairs of the city audited annually by an independent certified public accountant, who is not otherwise in the service of the city, or by the Division of Legislative Audit of the State of Arkansas.

- Compliance with:
  - (1) Arkansas Municipal Accounting Law, 14-59-101 et seq.;
  - (2) Arkansas District Courts Accounting Law, 16-10-201 et seq.;
  - (3) Improvement contracts, 22-9-202 → 22-9-204;
  - (4) Budgets, purchases, and payments of claims, etc., 14-58-201 et seq. and 14-58-301 et seq;
  - (5) Investment of public funds, 19-1-501 et seq.; and
  - (6) Deposit of public funds, 19-8-101 → 19-8-107.
(c) (2) (A) The financial statements of municipalities shall be presented on a fund basis with, as a minimum:

- (i) The general fund and the street fund presented separately; and
- (ii) All other funds included in the audit presented in the aggregate.

(B) The financial statements shall consist of the following:

- (i) A balance sheet;
- (ii) A statement of revenues (receipts), expenditures (disbursements), and changes in fund equity (balances);
- (iii) A comparison of the final adopted budget to the actual expenditures for the general fund and street fund of the entity; and
- (iv) Notes to financial statements.
AUDITORS

A.C.A. § 14-58-101

(C) The report shall include as supplemental information a schedule of general fixed assets, including land, buildings, and equipment.

(3) In the alternative to subdivision (c)(2) of this section, the governing body of the municipality may adopt an annual resolution requiring their audit to be performed in accordance with the guidelines and format prescribed by the Governmental Accounting Standards Board, the American Institute of Certified Public Accountants, and the United States Government Accountability Office, if applicable.
(b)(1) A council member, official, or municipal employee **shall not be interested, directly or indirectly, in the profits of any contract for furnishing supplies, equipment, or services to the municipality unless the governing body of the city has enacted an ordinance specifically permitting council members, officials, or municipal employees to conduct business with the city** and prescribing the extent of this authority. Ark. Code Ann. § 14-42-107
ACT 582 OF ‘15, 14-59-115

- Authorizes electronic distribution of funds by private person/entity (payroll)
- Requires ordinance dictating a method accounting control, documentation etc.
- Requires city to ensure the private person/entity is insured, bonded and uses best practices
- Treasurer must still approve disbursement before funds are dispersed
Law enforcement officers in cities and towns with fewer than five (5) law enforcement officers, including the chief or marshal, are exempt from the overtime provisions.

Volunteers are not considered “employees” for this purpose however. No distinction is made between part-time and full-time employees.

You must be sure your officers receive a minimum wage for all hours worked in a work period.

29 U.S.C. §213(b)(20); 29 C.F.R. §§ 553.200, 553.211.
Uniformed Employees- Fire

- Same as police, see above.
- “Employee in fire protection activities” means an employee: including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who--
  - (1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and
  - (2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.
  - 29 U.S.C.A. § 203(y)
The FLSA provides a partial overtime exemption for uniformed employees who work a “work period” established by the city of no fewer than:

- seven days and no more than twenty-eight days.
- The city can establish separate work periods for the police department and the fire department.
- If the city fails to establish a work period, 207(k) does not apply and a fire or police employee working over forty hours will accrue overtime compensation.

- See handout for chart.
- 29 C.F.R. § 553.230.
Final Thoughts

- The city as employer has the option of paying overtime or of giving comp time off.
  - The employee must understand that the city has a policy of compensatory time off.

- Compensatory time is accrued at 1 ½ hours for each hour worked.
  - Police and fire employees can accrue a maximum of 480 hours of comp time or 320 hours worked.

- After an employee has accrued maximum compensatory time, the employee must be paid in cash for overtime worked.

- 29 C.F.R. § 552.230
Final Thoughts Part Deux

- There is no FLSA limit on the number of hours per day worked (other than child labor). 29 C.F.R. § 778.102.

- A work week under the FLSA is defined as seven consecutive 24-hour periods (although this may be altered for police and firefighters as discussed above). Note that this may not be the same as the city’s “pay period.”

- Only hours worked count in calculating overtime. Pay for holidays, vacations, sick time, jury duty, etc., do not count as hours worked.

- 29 C.F.R. § 778.102.
Questions/Comments?

Mark R. Hayes
Director of Legal Services
Arkansas Municipal League
mhayes@arml.org
501-978-6102
Major Sources of Revenue available to Arkansas Cities

Arkansas Municipal League
Volunteer Certification Program
Municipal Finance and Budgeting Workshop
September 20, 2017

Presented by Don Zimmerman
Executive Director
Ad Valorem Property Tax for General Purposes

Ad Valorem tax is a tax levied/based on the value of real estate or personal property located within your city (annual real or property tax).

- Tax is levied at a fixed rate on the assessed value of real or personal property;
- Millage rate is set by City Council and levied by Quorum Court in November or December.
- State law mandates, tax may not exceed 5 mills for general operations (Art. 12. Sec 4 AR Constitution).
State General Fund Turnback

State Turnback is the apportionment to Municipalities of monies appropriated by the General Assembly annually to the Municipal Aid Fund from State General Revenues.
State General Fund Turnbacks

- The revenue is distributed on the basis of population with the amount apportioned to each municipality in the proportion that its population bears to the total population of all municipalities, according to the most recent decennial or special census.
The Arkansas Municipal League publishes the estimated per capita General turnback annually.

- 2017 estimated turnback is $15.50 per capita
- 2018 estimated turnback is $15.50 per capita
Franchise Fees

Investor owned utilities pay franchise fees yearly for the use of public right-of-ways and streets for the delivery of their services.

Whatever fee is levied is then passed onto the utility user.

Let’s look at some of those utility companies, within our cities statewide, that utilize franchise fees.
Utilities that collect franchise fees:

- Cable TV (maximum 5%) – A.C.A § 23-19-206(e)
- Electric (maximum 4.25%)
- Phone (maximum 4.25%)
- Gas (maximum 4.25%)

4.25% is maximum unless agreed to by the affected utility or approved by voters of the municipality.
A.C.A § 14-200-101(b)(1)(A)(iii)
Utility Services

Typical utilities offered by most cities to their residents or surrounding area residents are:

- Water
- Wastewater
- Electric
- Gas
- Cable

* Water & Wastewater are the most common

* A.C.A. Title 14, Chapters 234 and 235
Solid Waste Utility Fees

Cities may charge a fee for the pick up and disposal of the following kinds of solid waste:

- Residential
- Commercial
- Industrial

* A.C.A. 14-232-110
Fines & Forfeitures

Municipalities receive sums collected from the following:

- Misdemeanors or violations of state or city ordinances; and
- Traffic offenses committed within city limits.

*A.C.A. 16-17-707*
Permit & Inspection Fees

Municipalities have the duty/power to prevent injury or annoyances from dangerous, offensive or unhealthy conditions within their city.

- Consequently, the City has the authority to require building permits and exercise safety inspections.
- Charging individuals or organizations accordingly.

* A.C.A 14-56-201-203
Parks Department Revenue

Cities may charge fees to citizens for their participation in city run recreational programs such as softball, basketball, football, volleyball, etc.

Additional revenue may also come from municipal run golf courses, swimming pools and concession stands.
Cities may charge and collect for the privilege of doing business or carrying on any trade, profession or vocation for a license fee or tax.

* A.C.A. 26-77-102 et seq.
Other sources of miscellaneous revenue

- Outside fire protection
- Sale of Equipment
- Animal licenses
- Hotel, Motel and Restaurant Tax
  (Advertising and Promotion – up to 3¢)

*A.C.A. 26-75-602*
More sources of misc. revenue

- Vehicle Tax (maximum of $5)
- Interest earned from Special accounts
- Development Impact Fees (A.C.A 14-56-103)
Sales and Use Tax

Cities and towns may levy a local sales tax on all gross sales not exempted by state law within their city or town.

- Sales and use taxes may **not** be enacted without a vote of the people.

State legislation grants broad powers and options to municipalities that should assist cities and towns in passing local option sales taxes.
Citizens in cities or towns can vote on:

- Sales taxes of 1¢, 3/4¢, 1/2¢, 1/4¢ or 1/8¢ (or combinations) for operating or capital improvement purposes.
- Additional 1¢ for Bond Issues or Capital Improvement for 24 months with Bond Issue.
- Another 1¢ for park projects for two (2) years.
- Another 1¢ for economic development projects.
**Countywide Sales Taxes**

- Share of countywide Sales Tax per person based on city or town population in relation to total population of county.

* A.C.A. 26-74-214 & 313
Home Rule Authority

In addition to all other authority of local government to levy taxes provided by law, any municipality acting through it governing body and upon approval of qualified electors of the city may levy any tax not otherwise prohibited by law.

A.C.A. 14-43-601 et seq. A municipality may legislate upon the state affairs described in subdivision (a)(1) of Section 14-43-601 if not in conflict with state law.

A.C.A § 26-73-103(a)(2) The general rule is that a city may not levy a tax without approval by the voters.

* A.C.A § 14-43-601 & 602 (Act 1187 of 2011)
Ark. Code Ann. § 26-73-103. On the other hand, a city may impose a fee without an election. Telling the difference between a tax and a fee is not always easy. The Arkansas Supreme Court has stated that “a ‘tax’ is imposed to raise general revenue, while a ‘fee’ is imposed in the exercise of the city’s police power.” *City of Marion v. Baioni*, 312 Ark. 423, 850 S.W.2d 1 (1993). This means that a charge for a specific service or benefit is likely to be considered a fee rather than a tax.

*See *Holt vs. City of Maumelle*, 302 ARK. 51, 786 S.W. 2d 581 (1990)
Street Funds

**State Turnback** monies are apportioned to cities from highway revenues. These fees are primarily received from:
- Vehicle Licensing fees, Gasoline tax, Severance tax, and $\frac{1}{2}$¢ Sales Tax enacted in 2012.

- Revenue is distributed on a basis of population, according to the latest census.
- The amount is paid to each municipality in proportion that its population bears to the total population of all municipalities.

*A.C.A. 27-70-206, 207*
Street Funds

The Arkansas Municipal League publishes the estimated per capita Street turnback annually.

- Estimated 2017 turnback is $65.50 per capita
- Estimated 2018 turnback is $65.50 per capita

- State Aid Streets Law-A.C.A § § 27-72-401 – 419
Road Taxes

- City residents pay a countywide millage rate for the upkeep of all roads in the county.
- One-half (1/2) of the revenue raised in the city is returned to the city except where a greater amount is allowed.

*A.C.A. 26-79-104*
Other revenues

- Cities may charge a fee to utility or construction companies for street repairs (i.e. street breaking permits).
Potential Revenue Sources

• Annexation

• Marketplace Fairness and Remote Transactions Parity Act.

• Ideas for Improving Arkansas Highways
ACOOP: Arkansas Continuity of Operations Program

Carol M. Skill

Department of Information Systems

DIS

https://acoop.arkansas.gov
ACOOP: Arkansas Continuity of Operation Program

Arkansas Disasters
What We Do

- Arkansas Continuity of Operations Program ACOOP
  - All Hazards
  - Response, Continuity, Recovery
  - Required for State Agencies
  - Available to all State and County
- Arkansas Department of Legislative Audit ADLA
What Does ACOOP DO?

ACOOP Provides

- Software
- Consulting
- Training
- Testing
- Resource
- Data Backups
Continuity of Operations

COOP
Continuing to carry out essential functions during and after a disruptive event.
What Does ACOOP Look Like?

https://acoop.arkansas.gov
Why is ACOOP Important?

• In the event of a Disaster:
  – Who needs to be contacted?
  – Where will the Employees go?
  – Where is your Data Stored (Backups)?
  – How are you Going to Restore your Data?
  – What Do you do First?
  – What is your Essential Functions?
  – How do we Inform Employees of what to do?
What Information is Required?

State Standards

- Procedure documentation for critical functions
  - Step by Step instructions on how to perform an administrative function/software manual

- Office manual/manual procedures
  - Step by Step instructions on how to perform function without technical systems

- Procedure documentation for restoring IT systems
  - Step by Step instructions to restore servers and data
State Standards: Essential Functions

- Essential Functions
  - What you do on a daily basis for all divisions?

- Criticality of functions
  - One hour or less
  - Half a business day
  - One business day
  - More than two business days
State Standards: Teams and Tasks

- Teams and recovery tasks
  - Tasks should step you through recovering a function or portion of a function.
  - Initial Response
  - IT recovery team
  - Critical applications
  - Recovery of resources
State Standards: Call lists, Reporting Structure and Order of Succession

• Call List
  • To ensure all employees and staff are accounted for in the case of an event

• Reporting Structure
  • Hierarchy of who is in charge
  • Main management positions
  • Can include essential positions or managers

• Orders of Succession
  • Primary, secondary, and tertiary person(s) to take over a specific job if the key employee is no longer available
What are Vital Records?

Resources: Vital Records

- What documents or databases do you need to do your job?
  - Electronic or paper
  - IT backups stored offsite
  - Virtualization
What Resources Do You need?

- Software
  - Prioritize by order of restoration*
- Vendors
- Supplies
- Minimum Hardware Requirements
  - Memory, Processor Type, Etc.
- Equipment
Plan for Several Different Potential Disasters.

State Standards

• Multi-Hazard Response Plan
  • A plan to address initial response measures for multiple hazards such as tornado, fire, active shooter, etc.
  • Example in “Knowledge Base”

• Pandemic Flu Plan
  • Example in “Knowledge Base”
State Standards

- Devolution
  - Who will you devolve your authority to?
  - Example in “Knowledge Base”
- Media Statement
  - Sample statement
  - PIO officer to handle requests and statements
  - Example in “Knowledge Base”
- Cross Training Plan
  - Example in “Knowledge Base”
Plan Audits

- ACOOP Plan Reviews
  - Ensure plans meet state standards.
  - Ensure plans address COOP and not crisis management.
  - Available by request at any time.
  - Blank Review sheet in “Knowledge Base”
Contact Information

Carol M. Skill
501-682-5381
Carol.Skill@Arkansas.gov

ACOOP Help Desk
DIS.ACOOP@Arkansas.gov
Dave Mims
CEO
davemims@sophicity.com
770-670-6940 x110
What we will cover

1. What? - What do I need to know?
2. How? - How have some real cities been impacted?
3. Help! - Where is help!
4. Take Aways
What do I need to know?

• Passwords
• Virus Attacks
• Data Backup
• Security Updates
• Physical Security
• City Websites
What? - Passwords

A study from a research company in California found:

• 1 out of 3 people had their passwords written down somewhere around their desk.

• Many used obvious passwords (child name, pet name, college mascot, birthdate, etc).

• Overall, researchers figured out passwords of half of the people in the study!

Half of all security breaches involve stolen or easily guessable passwords!
SplashData’s annual **Worst Passwords List**, compiled from over 2 million **leaked** passwords during the year, shows people continue putting themselves at risk. For 2016:

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<tr>
<td>1.</td>
<td>123456</td>
<td>2. password</td>
<td>3. 12345</td>
<td>4. 12345678</td>
</tr>
<tr>
<td>6.</td>
<td>qwerty</td>
<td>7. 1234567890</td>
<td>8. 1234567</td>
<td>9. princess</td>
</tr>
<tr>
<td>11.</td>
<td>login</td>
<td>12. welcome</td>
<td>13. solo</td>
<td>14. abc123</td>
</tr>
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<td>16.</td>
<td>121212</td>
<td>17. flower</td>
<td>18. password</td>
<td>19. dragon</td>
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<td>21.</td>
<td>master</td>
<td>22. hottie</td>
<td>23. loveme</td>
<td>24. zaq1zaq1</td>
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Remember, hackers are using **automated software** to look for holes. That automated software attempts common and weak passwords that are easy to crack.
What? - Passwords

• Use a password on all devices - including tablet & phones.
• Use passphrases (preferred) or complex passwords.
• Use two factor authentication.
• Change passwords regularly.
• Do not write passwords down and leave them visible.
• Do not use obvious passwords. Change your password today if in the top 25...
• Do not save passwords to websites and applications.
• Do not use the same password for all systems you access.
Secure City Facebook Page?

• With 2 billion monthly users, Facebook is the 3rd most popular website in the world.

• Start with the Password tips we just covered.

• Change your password today (ex-employees, hackers, ...)

• Configure “Setting Up Extra Security” in Facebook settings.
  • Enable alerts for unrecognized logins
  • Enable two-factor authentication

• Limit and manage authorized users.

• Acquire a Facebook Verified Badge.
What? - Viruses

Computer viruses are software programs designed to spread and interfere. They will:

• corrupt, delete, and steal data

• use your access, email, social media, and messaging programs to spread itself

• hold your data hostage for money -- e.g. Ransomware!

Viruses can be disguised as attachments and links of, for example, funny images, greeting cards, online games, social media quizzes, or audio and video files.
What? - Ransomware again! $$$

- Current indications are that ransomware price demands are increasing.

- **World’s biggest cyberattack** on May 2017, named WannaCry, sends 150 countries into disaster recovery mode.

- Future concerns (already proofed) are infrastructure targeting ransomware that put our industrial control systems and municipal water supplies at risk.

The easiest way for a hacker to get in is when **someone lets them in the door**.
What? - Viruses

• 93% of phishing emails are now ransomware!

• The average cost of a data breach is $204 per lost record!

• The average organization faces 1,400 cyberattacks in a week!

• A cyber breach can go undetected for months!

What do we do?
What? - Viruses

• Install **business class antivirus software** on every computer.

• Audit antivirus software regularly confirming installation and definitions are **up to date**.

• Keep computers updated and **patched**.

• Train staff on common sources of viruses: **email attachments**, **websites**, and **online software**.

**People** install viruses! We choose to download them. We trust too much.
What? - Data Backup

Ask yourself these questions:

• **Are** we backing up our data?

• **What** data is critical to the city? All of it?

• **How** will the city be affected if data cannot be accessed for extended periods of time?

• **Who** needs to be recovered first?

• **When** did we last test recovering our data?

• **Why** am I worried?
What? - Data Backup

- Perform onsite data backups of city data for quick near recovery. Time-to-recover should not be neglected.
- If the data is in question for backup, back it up.
- Perform offsite data backups to recover from theft or disasters.
- At a minimum, perform daily data backups.
- Ensure no human interaction is required.
- Have a plan for if there is a disaster.

Test your backups regularly! People choose to not test. We assume too much.
What? - Security Updates

Studies show:

• Most cyber outbreaks can be prevented by keeping computers **up to date**.

• Applications (like Adobe Reader and Java) are **more likely** to be exploited than Operating Systems (like Windows).

• Most people **ignore** messages on their computers about installing updates.
What? - Security Updates

- Let those updates and security patches **run**! Patch management is an essential element of cyber protection.

- As **vulnerabilities** are found, vendors create a fix and make a patch available, but those patches still have to be deployed.

- If you have servers, make sure an **IT resource** is updating them.

- Upgrade any application, operating system, and hardware that has reached **end of life**.

**People** ignore messages and warnings. We choose the risk. We are too impatient.
What? - Physical Security

Don’t forget the old-fashioned way of stealing

• Protecting city data also involves protecting physical equipment.

• Theft or a disgruntled employee can be just as harmful as a hacked computer. Insiders can do some of the worst damage.

• Decommissioned servers and workstations may still have sensitive data on them.

• Most compromised networks occur from someone internal.
What? - Physical Security

• **Lock computers** when away.

• Ensure servers and network equipment are **locked up** -- no direct access available.

• Ensure external media (USB drives, backups, etc) are **locked up**.

• Use **encryption** if possible.

• Follow **password rules** identified earlier.

• Have IT professionals **permanently and securely wipe** sunsettled equipment.

**People** steal. We choose to allow access. We don’t adequately secure our assets.
What? - City Websites

Today, when someone is interested in knowing more about your community, where do they go first?

And if your city website does not reflect your community well, what do they do?

• Is our city website modern?

• Is our city website’s content current?

• Is our city website secure?

When did you personally last visit your city website? Could it be defaced and you don’t even know it?
What? - City Websites

• Ensure the city website is hosted by a reputable provider

• Know where the city website is hosted.

• Ask your website’s host if they have been audited for potential risks by a third party.

• Follow password rules identified earlier.

People judge quickly. We choose how to make the first impression.
How?

How have some real cities been impacted?

These are not **headlines** in the news. These are real cities and examples of what is seen **daily**. Cyber attacks are **costly**, **destructive**, & **embarrassing** for cities.

City #1: Virus initiates $90,000 transaction!

City #2: Virus deletes financial data!

City #3: Virus hacks city website!
How? - Virus $90K Xaction!

City #1: Real city that will remain anonymous.

- Finance officer gets a call from the city’s bank.

- A transaction in the amount of $90,000 was just attempted from her computer.

- Her computer was compromised by a virus. The virus allowed her computer to be remotely controlled by an outside party.

- Finance officer panicked. What do I do?
How? - Financial data gone!

City #2: Real city that will remain anonymous.

- **Finance server** became infected with a virus.
- City’s data backup system **failed** to recover the data. No one had ever **tested** the backups!
- **Financial data lost!**

Data loss has **increased 400 percent** since 2012, while 71 percent of enterprises are not fully confident in their ability to recover after a disruption.
How? - Website hacked!

City #3: Real city that will remain anonymous.

- **Citizens** visiting the city’s website found nothing but advertisements. The website had been hacked and all content replaced with advertisements.

- The hacker infiltrated the utility billing system thru the online bill pay.

Citizen computers could have been infected with spyware/malware after visiting the city website. Citizen information may have been stolen.
Help!

1. Legislative Audit
2. Top 10 Most Common Legislative Audit Issues
3. AML’s IT in a Box
4. AML’s IT in a Box drives Legislative Audit Compliance
# Legislative Audit

*Guidelines for best practices and policies to mitigate potential information security risks.*

<table>
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Top Legislative Audit Issues

Top 10
Top Legislative Audit Issues

Top Legislative Audit Issues


9. Offsite Backups (risk: data loss and inability to operate)
Top Legislative Audit Issues


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8. Audit Log not enabled (risk: no insight into who or what XA)
Top Legislative Audit Issues

10. **Physical Access Security** (risk: unauthorized access)

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8. **Audit Log not enabled** (risk: no insight into who or what XA)

7. **Audit Log Report Review** (risk: missed errors/fraudulent XA)
Top Legislative Audit Issues

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2. **Remote Access Policy** (risk: unauthorized access)
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4. Passwords (risk: unauthorized access)
3. Review Access Security (risk: unauthorized access)
2. Remote Access Policy (risk: unauthorized access)
1. Data Integrity (risk: data changes outside of process or approval)
New Legislative Audit considerations:

- **Document**, document, document… It’s not just policies.
- Security awareness **training** including social engineering.
- Security rules/compliance apply **regardless of locale** (on premise, offsite, hosted, ...).
- Document and log **remote access**.
- **WIFI** requirements are detailed.
- **Two-factor authentication** encouraged.
- User **admin access to workstation** is discouraged.
- **Secured destruction** of retired devices and paper.
- Document any system **processing credit card** payments.
- If **BYOD** is allowed, then policy and security are required.
Government getting serious

**Federal:** May 2017 President signs Cybersecurity Executive Order requiring departments and agencies to follow the same cybersecurity standards and best practices placed upon the private sector.
Government getting serious

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**Compliance** is no longer a recommendation, but is becoming a very serious requirement with real implications otherwise.
AML’s IT in a Box

Who guarantees IT services based on your expectations?

WE DO!

Certified
Experienced certified senior engineers. We are GCIC certified.

New City Website
Modern fresh design. We manage the content. Accept online payments.

Data Backup
Unlimited offsite data backup storage for disaster recovery. Indefinite retention for data backup archiving. Realtime monitoring. Quarterly testing.

Document Management
Protect city records. Apply record retention schedules.

Email

Open Records Requests
Be prepared for FOIA and Open Records Requests. We will help the clerk process them.

Policy & Compliance
Formally adopt best practices and policies to address information security risks.

Video Archiving
No more buying additional onsite storage for squad car and body camera videos!

Vendor Management
No more frustrating calls with vendors. We got it.

Helpdesk
24x7. We are always there when you need help.

Server, Desktop & Mobile Management
Guard against cyber attack. Keep your computers patched, protected, and healthy.

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Drive Leg Audit Compliance

AML’s IT in a Box provides a comprehensive stack of technologies and services tailored to cities meeting federal, state, and local government compliance.
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4. **Manage** ongoing. **Test** regularly. **Adapt** as technology changes.
Recap

What? - We’ve covered ‘What you need to know’?

How? - We’ve covered ‘How some real cities have been impacted’?

Help! - We’ve covered ‘Help from Legislative Audit and AML’s IT in a Box’!

Know cyber crimes affect all cities, not just big ones.

Know Federal and State compliance is getting serious.

Don’t be an easy target. Don’t be a victim. Don’t be front page news. -- Take action! Be proactive!
Take Aways

• Am I at risk? Is our city at risk?
  • Cyber attack? Records/Data loss? Unauthorized Access (external or internal)? Erroneous changes? Website?
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• Am I at risk? Is our city at risk?
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When you subscribe to AML’s IT in a Box:
  ✓ Cyber protection is provided & proactively managed.
  ✓ I.T. needs are addressed & proactively kept modern.
  ✓ Legislative Audit compliance is met & proactively maintained.
Dave Mims, CEO
davemims@sophicity.com
770-670-6940 x110

Visit us on the web at:
Sophicity.com

Sign up for our Monthly Newsletter
Take Aways

We have blogged extensively on these topics at Sophicity.com, so leverage these weekly to-the-point and in-plain-English articles to bring awareness of the risks to your staff:

- Patch Management: A boring task that prevent scary threats
- 5 Reasons Your City is an Easy Target for Hackers
- Why Hackers' Jobs Got Even Easier
- Don’t Decommission Hardware Yourself—Call the Professionals
- Preparing for Cyberattacks in a Dangerous World
- You're Backing Up Your Data, But Can You Recover It?
- 5 Tips to Tackle Information Security from the Inside
- 5 Ways to Stop Hackers from Stealing Your City's Most Sensitive Data
- 5 Tips to Help Employees Avoid Clicking on Malicious Emails
- Why Is My Small City Considered a Cybersecurity Threat? Here's Why
MUNICIPAL ACCOUNTING HANDBOOK
Financial Statements are the end result!!

- Daily transactions
- Journal Entries
- General Ledger
- Fund Statements or Financial Statement
Assets – Liabilities = Fund Balance

- Non-spendable
- Restricted
- Committed
- Assigned
- Unassigned
MUNICIPAL ACCOUNTING LAW

- Record Keeping Requirements 14-59-101 thru 118
  - Bank Accounts and Bank Reconciliations
  - Prenumbered Checks and EFTs
  - Cash Receipts and Disbursements
  - Fixed Assets
  - Record Retention and Destruction
  - Turnback Compliance
Administered by Governmental Bonding Board

Covers actual losses sustained by the fraudulent or dishonest acts committed by officials or employees

Premiums are paid by the State Treasurer from funds withheld from the Municipal Aid Fund.

For Certificate of Coverage call Risk Management Division

- Phone: 501-371-2690
- Email: insurance.risk.management@arkansas.gov

ARKANSAS SELF-INSURED FIDELITY BOND
2 Fund Types are Required
- Street
- General

3 Classifications of Funds
- Governmental – Revenues from Taxes and Grants
- Proprietary – Revenues from Fees Charged
- Fiduciary – Pension funds
Extra Precaution for Cash and Bank Accounts

- Liquid – Easiest to be stolen or misappropriated
- Cash Receipting and Disbursing should be segregated
- Petty Cash funds are allowed if approved by City Council but should only be used for small expenditures
- Bank Reconciliations - Law requires to be performed Monthly
  - Reviewed by someone other than preparer
  - 1st step to good record keeping
BUDGET LAW AND REMINDERS

- Budgeting Law 14-58-201 thru 203
  - Mayors submit to governing body before December 1
  - Budget adopted before February 1

- Annual Audit 14-58-101 (Private or Legislative Audit)
  - Remember to review the audit report with your Council and document in your Minutes
File the required Federal and State forms
  - Use the calendar (pg 38) for particular due dates
  - File and remit Federal and State withholdings
  - Reports filed with the IRS and DFA should be reconciled to City payroll reports

Act 582
  - Allows municipality to contract with a third party to disburse funds for payroll
    - Established by ordinance
    - Treasurer approved
    - Entity insured and bonded

PAYROLL
Requirements by Fund by Year

- Bank statements with check images
- Cash Receipts and Cash Disbursements
- Bank Reconciliations with deposit slips
- Paid Invoices
- Certificate of Deposit detail (date and rate of interest)
- IRS Form 1099s
- Computer Files backed up

RECORD KEEPING REQUIREMENTS
Maintenance and Destruction Guidance 14-59-114

What information

- Financial Records as we have discussed
  - Budget
  - Audit Report
- Council Minutes
- Ordinances and Resolutions
- Insurance and Personnel policies

Length to maintain

Shred with caution 14-2-203 (Public Records)

RECORD RETENTION
COMMON ERRORS TO AVOID

- Failure to receipt and disburse funds with proper documentation and prenumbering requirements
  - EFT can be made to federal and state governments, but others should be adopted by ordinance and approved by Leg Audit
- Failure to reconcile bank accounts monthly
- Failure to deposit state highway funds into Street Fund
- Failure to Submit Budget by December 1 and Adopt by February 1
- Failure to Publish or Post annual financial statement by April 1
- Failure to provide adequate Disaster Recovery Plan and Password controls
Law 14-59-107
- Governing body shall adopt a fixed asset policy
  - Dollar amount with useful life necessary to qualify as a fixed asset
- Major types of categories
  - Land, Buildings, Vehicles, etc.
- Listing shall contain
  - Asset number or serial
  - Description
  - Date of Acquisition or (when disposed)
  - Cost of Property
Unclaimed Property Reports due October 31
  - Stale dated check resolution
  - And, look to make sure your city is not listed on the Great Arkansas Treasure Hunt!

Bank Deposit Collateralization 19-8-107
  - Deposits in excess of FDIC insurance of $250,000 must be collateralized with eligible securities set forth in 19-8-203
  - Bank should provide security and custodial documents
Glossary of Accounting Terms
Resource List
Sample Municipal Calendar
  Due dates by month and quarter
Appendix A
  Sample Cash Receipt and Disbursement Journals
Appendix B
  Sample Chart of Accounts
Appendix C
  Sample Fixed Asset Listing
MUNICIPAL PURCHASING, BIDDING, AND PROFESSIONAL SERVICES IN ARKANSAS

Mark R. Hayes, General Counsel
Arkansas Municipal League
September 20, 2017
Who does the purchasing for an Arkansas city or town?

- Short Answer:
  - The mayor or the mayor’s duly appointed representative.
Who does the purchasing for an Arkansas city or town?

- Long answer:
  - In a city of the first class, city of the second class, or incorporated town, the mayor or the mayor’s duly-authorized representative shall have exclusive power and responsibility to make purchases of all supplies, apparatus, equipment, materials, and other things requisite for public purposes in and for the city and to make all necessary contracts for work or labor to be done or material or other necessary things to be furnished for the benefit of the city, or in carrying out any work or undertaking of a public nature in the city.

“Section 2(C) of the Tontitown ordinance, quoted above, subjects municipal purchases in amounts between $1.00 and $20,000 to "prior confirmation by the City Council." I see no reason to believe that "prior confirmation," as used in the ordinance, means anything other than "prior approval." As noted above, my predecessor opined that a council is not empowered to require prior approval of purchases that are described by A.C.A. § 14-58-303. See Op. Att'y Gen. 93-332. In my opinion, then, the Tontitown ordinance's requirement of prior council confirmation infringes on the mayor's "exclusive power and responsibility" with respect to purchases and contracts that are described by A.C.A. § 14-58-303.”

Limits on Mayor’s Spending Authority

- “[T]he municipal governing body of any city of the first class shall provide by ordinance the procedure for making all purchases which do not exceed the sum of twenty thousand dollars ($20,000).” 14-58-303(b)(1)(A).

- “[T]he municipal governing body of any city of the second class or incorporated town may provide by ordinance the procedure for making all purchases.” 14-58-303(b)(1)(B).
Limits on Mayor’s Spending Authority

- 14-58-303(2)(A)(i) – “[I]n a city of the first class where the amount of expenditure for any purpose or contract exceeds the sum of twenty thousand dollars ($20,000), the mayor or the mayor's authorized representative shall invite competitive bidding on the purpose or contract by legal advertisement in any local newspaper. (Can be waived.)

- 14-55-204 – appropriations require a majority vote of the council.

- 14-58-203 – the budget is an appropriation.
So if it hasn’t been appropriated…

… *Then it shouldn’t be spent.*

**AGAIN: NO APPROPRIATION; NO SPENDING**

- If it got spent anyway, amend the budget before the End of Year.
- If you don’t do it by the EOY, do it ASAP!
- Not that I’m recommending this. See first bullet. That’s what I’m recommending.
- I know: “in the real world….”
... The budget (or possibly some other form of appropriation) sets the parameters for what the Mayor may spend.

And the $20,000 dollar spending limit (or authorization?) *That's a myth...*
(b)(1) No alderman, council member, official, or municipal employee shall be interested, directly or indirectly, in the profits of any contract for furnishing supplies, equipment, or services to the municipality unless the governing body of the city has enacted an ordinance specifically permitting aldermen, council members, officials, or municipal employees to conduct business with the city and prescribing the extent of this authority.

So they can buy it… but can they get rid of it?

- Yes, in a city of the first class, a city of the second class, or incorporated towns, the mayor or his authorized representative may sell or exchange any municipal supplies, materials or equipment with a value of twenty thousand dollars or less.
  - Arkansas 2017 Acts – Act 470; A.C.A. 14-54-302
  - No item over $20k may be sold without a competitive bidding process.
  - Repeat: over $20k you must bid! (by ordinance can be less than $20k)
What if a city’s personal property becomes obsolete (no longer used)?

- § 14-58-302(e)(1) provides that personal property belonging to a municipality that is no longer used or obsolete may be:
  - Sold at an Internet auction,
  - Sent to the Marketing and Redistribution Section of the office of State Procurement of the Dep’t of Finance and Administration,
  - Be transferred to another governmental entity within the state, or
  - Donated under this section.
Are there any other options for obsolete municipal property?

- Yes, the item may be disposed of in a municipal landfill if the mayor or his authorized rep. certifies in writing AND the governing body of the municipality approves that the item has:
  - Been rendered worthless by damage or prolonged use; OR
  - Only residual value AND has been through public auction and not sold.

A.C.A. § 14-58-302(e)(2)
In a city of the first class, the mayor or his duly-authorized representative may approve for payment out of funds previously appropriated for that purpose, or disapprove, any bills, debts, or liabilities asserted as claims against the city.

The municipal governing body shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of such bills, debts, or liabilities exceeding that amount shall require the confirmation of the governing body.

Ark. Code Ann. § 14-58-305. (Home Rule: likely all cities and towns can do this)
Buying (or selling, leasing, renting, etc.) Real or Personal Property

- What is Real Property?
- What is Personal Property?
- That covers every kind of property there is.
- So what kind of property are we talking about?
- All kinds.
What does the law say?

- Municipal corporations are empowered and authorized to buy/sell/lease/rent any real estate or personal property. Ark. Code Ann. §14-54-302(a).

- (But remember: must be for a public purpose)
“Municipalities are authorized to exchange properties, real or personal, with other municipalities or with counties. Provided, any such exchange **shall be approved by ordinance** of the governing body of the municipality **and shall be accomplished in accordance with procedures prescribed by the governing body.**”

Ark. Code Ann. § 14-54-304 (West)
The “How” of Municipal Property Ownership

- The procedure set forth in the statute requires that the mayor and the city clerk or recorder enter into a contract.

- The contract or lease must be approved by a majority of the city council “present and participating,” in the form of a written resolution. ACA § 14-54-302(b).
“Present and Participating?”

- That’s different. Usually we need a majority of the whole. See 14-55-203.

- Most likely, however, the courts would still require a quorum.
Does this apply to ALL property?

- Do these rules apply to *all* contracts for property, or only those in writing?

- Every purchase or service involves a “contract” in the legal sense, whether written or not. Even small, low-cost items such as paper clips or a box of nails are “personal property.” However, the legislature in all likelihood did not intend to require a council resolution whenever a city makes such purchases.

- Suggestion: Apply to any *written* contracts, lease agreements, deeds, etc.

- Note: ACA 14-58-305 may still apply in a first class city.
“[T]he city, after accepting performance and enjoying benefits under a contract executed by its agent, could not avoid liability on the ground the contract was not authorized by resolution in writing approved by majority vote of the city council...”

Bidding Requirements

- When must a city take bids in order to purchase goods or services?
- It depends on the class of the city and what ordinances the city has in effect regarding bids for purchasing.
With the exception of public improvements, state law in Arkansas requires only that bids be taken for purchases in cities of the first class.

ACA § 14-58-303
What about other cities and towns?

- Although the statute only requires all cities of the first class to follow bidding requirements for purchases exceeding a certain amount, *all other cities and towns, regardless of class*, are free to enact local ordinances that establish a bidding requirement.
- And many have….check carefully!
- The amount may be much lower than the $20,000 imposed by the state statute.
In cities of the first class, bids must be taken for purchases that exceed the sum of twenty thousand dollars ($20,000.00). This amount could be lower, depending on the local ordinances for cities or towns of any class.
Bidding Procedures of 14-58-303

- Mayor or mayor’s authorized representative [AR] invites competitive bidding
- By legal advertisement in any local newspaper
- Bids opened on specified date in the presence of mayor or mayor’s AR.
More Bidding Procedures

- Mayor or AR has exclusive power to award the bid
- To lowest *responsible* bidder
- Or to reject any and all bids received.
- Council may *waive* bidding
  - in *exceptional circumstances*
  - when deemed not feasible or practical
  - by ordinance
Specifications

- The absence of good specifications can spell disaster.
- Detailed specifications insure that you acquire the product/equipment that you need to perform the service that you require.
- “An explicit set of requirements to be satisfied by a product, equipment or service.”
Helpful Spec Hints

- Understand the job or equipment requirements before you begin the bidding process.
  - This is essential, because if you don’t know what you want, you can’t tell them you want.

- You be the design engineer. Don’t assume that the dealer will know exactly what you want and will be able to sell you something off the lot.
“Responsible” Bidder

- “Where public officials have the right to reject any and all bids for a public contract, the view is generally taken that they may consider the differences or variations in the character or quality of the materials, articles, or work proposed to be furnished by the various bidders, in determining whether to accept any of the bids, or which bid to accept.”

- Of course the rejection of the lowest bid must be, as it was here, for good cause and in good faith.

Awarding the Bid

- Things to consider before awarding the bid:
  - Cost
  - Conformance to Bid Specifications
  - Field Testing or Demonstration
  - Previous experience with the bidder
Keep in Mind

- All bids should be opened publicly at precisely the time designated in the bid public bid notice.
- No late bids!
- No Substitutions!
- Announce the bid results. Do not officially award the bids until you have reviewed the bids carefully and are satisfied that they meet specifications.
So what constitutes bad faith?

- Bad faith consists of dishonest, malicious or oppressive conduct with a state of mind characterized by hatred, ill will or a spirit of revenge. *Stevenson v. Union Standard Ins. Co.*, 294 Ark. 651, 746 S.W.2d 39 (1988).

Exceptions - ACA 14-58-104

- Bids are not required for motor fuels, oil, asphalt, asphalt oil, natural gas, and in certain cases, new motor vehicles.

- An existing contract may be renewed or extended without bidding.

- On different terms? For different work? New specs? Prior court opinions are unfavorable and the court may well consider it a new contract rather than an existing one.
The Dangers of Messing up the Bidding Process

- “Arkansas statutes create a property interest in a competitively bid public contract for the lowest bidder that complied with the bidding specifications and procedures. *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517, 524 (8th Cir. 1985)”

- **Harris v. Hays**, 452 F.3d 714, 719 (8th Cir. 2006)

- This means that this property interest can be taken away unconstitutionally if a responsible lowest bidder is not given the contract.

- And that means **LAWSUIT!**
Not following bidding procedure does not excuse performance of the contract by the municipality:

“We find that the unjust enrichment principle is firmly embedded in Arkansas law in the context of work performed pursuant to illegal contracts made by political subdivisions such as cities and counties. We have permitted restitution based on unjust enrichment even when the associated contract was ‘void.’ City of Little Rock v. The White Co., 193 Ark. 837, 103 S.W.2d 58 (1937); International Harvester Company v. Searcy County, 136 Ark. 209, 206 S.W. 312 (1919). Cf. *603 Revis v. Harris, 219 Ark. 586, 243 S.W.2d 747 (1951).”

A municipality has the option to make purchases by participating in a Reverse Internet Auction. § 14-58-303(c)(1)

Exception: Purchasing and contracts for construction projects and other materials shall be undertaken pursuant to § 22-9-203(a) and (b), which is the Public Improvements statute.
“Reverse Internet auction” means an Internet-based process in which bidders

- Are given specifications for items and services being sought for purchase by a municipality; and
- Bid against one another in order to lower the price of the item or service to the lowest possible level.

There are a bunch of specialized requirements in § 14-58-303(c)(2)-(5) that should be read and followed before conducting a Reverse Internet auction.
The End
Special Bidding Requirements For Public Improvements

- ACA 22-9-203 (Amended by Act 725 of 2017)
  Applies to Contracts over $35,000.00, that are for
  - Major repair or alteration
  - The construction or erection of buildings or other structures
  - Or other permanent improvements
  - And it applies to all cities and towns
  - **ALL as in ALL!**
Construction” means any of the following services, functions, or combination of the following services or functions to construct a building, building site, or structure, or to construct a permanent improvement to a building, building site, or structure, including site work:

- (A) Alteration; (B) Design; (C) Erection; (D) Reconditioning; (E) Renovation; (F) Repair; or (G) Replacement;
- Pretty much everything
Competitive bidding may not be used in procuring legal, financial advisory, architectural, engineering, construction management and land surveying services. See Ark. Code Ann. § 19-11-801 and following.

Cities and towns may make other professional services subject to this statute by a two-thirds (2/3) vote of the governing body. See Ark. Code Ann. § 19-11-801(c).
Ark. Code Ann. § 19-11-802 states that a city “may encourage” firms engaged in the relevant professions to provide annual statements of qualifications.

Or may request “as needed.”

Perhaps “encourage” means “advertise.”
Ark. Code Ann. § 19-11-803 explains how the qualifications of each firm shall be evaluated, using criteria such as experience and technical competence; the capacity of the firm to perform the work; past record of performance; and the firm’s proximity to and familiarity with the area in which the project is located.
Ark. Code Ann. § 19-11-804 requires the city to select three firms.

Then select the best-qualified and negotiate a contract.

If unable to negotiate a contract, select another qualified firm from the three and undertake negotiations.

If unable to negotiate a contract with any of the three, compile a new list of qualified firms and start over.
An Example of a Prof. Serv. Mishap

- A municipality advertised price in a “bidding” style advertisement for an engineer’s services:

- “Presumably, the legislature wanted professional services to be procured on the basis of qualifications above all else without consideration of price until the firms were ranked and negotiations had begun. The interjection of price at any time prior to selecting the most qualified firms would seriously undermine this goal.”

- Graham v. Forrest City Hous. Auth., 304 Ark. 632, 636, 803 S.W.2d 923, 925 (1991)
Ark. Code Ann. § 19-11-802 states that a city “may encourage” firms engaged in the relevant professions to provide annual statements of qualifications.

Or may request “as needed.”

Perhaps “encourage” means “advertise.”
Questions/Comments?

Mark R. Hayes
General Counsel
Arkansas Municipal League
mhayes@arml.org
501-978-6102
Common Findings

400 Municipal reports presented to the LJAC  September 2016 – June 2017

An additional 126 presented in the September 2017 meeting.
Segregation of Duties

Purpose of segregating duties:
- Reduce the risk of fraud or error
- Safeguard the City’s assets

Solution:
- Compensating controls
Fixed Asset Records –

Findings include not having records at all, records without control totals, and records not properly updated.
ACA 14-59-107(a) The governing body shall adopt a policy defining fixed assets. At a minimum, the policy shall set forth the dollar amount and useful life necessary to qualify as a fixed asset.
ACA 14-59-107(b) All municipalities shall establish by major category and maintain, as a minimum, a listing of all fixed assets owned by the municipality. The listing shall be totaled by category with a total for all categories.
Fixed Assets

The major types – land; buildings; motor vehicles, by dept; equipment, by dept.; and other assets.

The list shall include: brief description, serial no., date of acquisition, and cost of property.
Budget

Budget findings include:

- Not adopting a budget for all funds
- Overspending the budget
- Not adopting by ordinance or resolution
Budget

ACA 14-58-202 The governing body shall, on or before February 1 of each year, adopt a budget by ordinance or resolution for operation of the city or town.
Budget

ACA 14-58-203 The approval ...of the budget...shall amount to an appropriation of funds. The governing body may alter or revise the budget...
Cash Receipt and Disbursement Journals

Findings include:

• No journals
• Journals without year-to-date totals
• Journals not properly classified
• Journals not properly posted
Receipts Journal
ACA 14-59-110 requires cities to establish a cash receipts journal or electronic receipts listing for each fund.

All receipts shall be posted to and properly classified in the cash receipts journal/listing. The journal shall be properly balanced and totaled monthly and on a year-to-date basis.
Receipts Journal

The receipts journal/listing shall indicate:

- Receipt number
- Receipt date
- Payor
- Receipt amount
- Classification or g/l account
Receipts Journal
Classification of receipts shall include:

- State revenues
- Property taxes
- Sales taxes
- Fines, forfeitures, and costs
- Franchise fees
- Transfers in
- Other
Disbursements Journal

ACA 14-59-111 requires cities to establish a cash disbursements journal or electronic check register for all funds. All disbursements shall be posted to and properly classified in the cash disbursements journal/register. The journal shall be properly balanced and totaled monthly and on a year-to-date basis.
Disbursements Journal

The disbursements journal/register shall indicate:

- Check date
- Payee
- Check number
- Check amount
- Classification or g/l account
Disbursements Journal

Classification of expenditures shall be by department in major type of expenditures:

- Personal services
- Supplies
- Other services and charges
- Capital outlay
- Debt service
- Transfers out
Improper Disbursements

These findings include:

- Ethics
- Payments to officials without documentation
Improper Disbursements

- Contributions to non profit organizations
- Salary overpayments to officials
- Disbursements for non business purposes/personal purchases.
Improper Disbursements

- Ethics – ACA 14-42-107 requires ordinance to do business with official or employee, directly or indirectly.
- Payments to officials without documentation – ACA 14-59-105 requires adequate supporting documentation for disbursements
Improper Disbursements

- Contributions to nonprofit organizations – Article 12, Section 5
  No city...shall appropriate money for...any corporation, association, institution or individual.
Improper Disbursements

- Disbursements for non business purposes/personal purchases
- ACA 14-58-303 The Mayor shall have power and responsibility to make purchases for public purposes in and for the city.
Salary Overpayments

Unused vacation/sick leave

- Policies
  1. When will it be paid (retirement? termination?)
  2. How much will be paid? Is there a cap?
  3. Does leave have to be used by year end?
Salary Overpayments

- Unused vacation/sick leave
  1. Documentation – how much leave has been earned/taken?
  2. Authorization – did supervisor sign off on timesheets showing leave taken?
Salary Overpayments

- Compensatory time policies:
  1. Who authorizes comp time?
  2. Who documents how much earned/taken?
  3. Is there a limited time in which it can be used?
Issuing receipts

These findings were primarily for not issuing receipts for a particular fund or a particular type of revenue.
Receipts

ACA 14-59-109 states that all funds received are to be formally receipted at the time of collection or the earliest opportunity by the use of prenumbered receipts or mechanical receipting devices.
Payroll Reporting Issues

Findings include:

- Not properly filing reports or forms
- Not remitting taxes
- Not reporting compensation
- Not preparing reports or forms
- Not reconciling amounts on forms with city records.
Sewer Reporting

ACA 14-234-119:

Sewer

- At least 100 sewer connections, but less than 750 – annual audit or Agreed-Upon Procedures/Compilation
- More than 750 – annual audit
- Submit report to ALA in 30 days
Water Reporting

ACA 14-234-119

Water

- At least 100 connections but less than 1,000 connections – annual audit or Agreed-Upon Procedures/Compilation
- More than 1,000 – annual audit
- Submit report to ALA in 30 days
Bank Account Reconciliations

Findings include not reconciling bank accounts at all and not properly reconciling.

ACA 14-59-108 requires that cities reconcile on a monthly basis their cash receipts and disbursements journal to the bank accounts.
Bank Account Reconciliations

ACA 14-59-108

The bank reconciliation shall be approved by a municipal official or employee, other than the person preparing the reconciliation, as designated by the chief executive officer of the city.
State Aid for Street Fund

These findings concern the direct deposit of the Street Fund state turn back into the General Fund and it not being subsequently transferred to the Street Fund.
Street Fund State Aid

ACA 14-59-104 requires state aid in the form of highway revenues to be deposited into the Street Fund bank account.

In late 2011, the State Treasurer allowed this money to be directly deposited into the Street Fund bank account.
Invoices Retained

Findings relating to documentation not available to support the disbursement.

ACA 14-59-105 requires municipal disbursements to have adequate supporting documentation.
Review of Report at Council Meeting

ACA 10-4-418 requires the report and accompanying comments and recommendations to be reviewed at the first regularly scheduled meeting of the governing body following receipt of the report.
Review of Report at Council Meeting

The governing body shall take appropriate action relating to each finding and recommendation in the report.

The minutes shall document the review of the findings and recommendations and the action taken by the governing body.
Common Findings

What are the solutions to these findings?

More training and education for municipal officials/employees
Suggested Budget Calendar
Suggested Budget Calendar

SEPTEMBER
- Prepare revenue estimates
- Meet with department heads
- Have department heads prepare expenditure requests

OCTOBER
- Meet with City Council or Budget Committee to set out spending priorities
- Meet with Department heads to review expenditure requests
Budget Calendar continued

NOVEMBER
- Preliminary budget or budget outline should be presented and reviewed by the City Council
- City holds budget hearing on proposed budget

DECEMBER
- City Council approves and adopts budget

JANUARY
- New Budget goes into effect
Sample Resolution for Marketplace Fairness Act
RESOLUTION NO. ___ (SAMPLE RESOLUTION)

A RESOLUTION BY THE (CITY OR TOWN) OF ____________
SUPPORTING FEDERAL AND STATE LEGISLATION TO ENSURE THE
PROPER ASSESSMENT AND COLLECTION OF SALES TAX FROM ALL
INTERNET/ONLINE SALES THEREBY CREATING A FAIR AND FREE
MARKET FOR ALL BUSINESSES AND CONSUMERS REGARDLESS OF
THE LOCATION OF THE BUSINESS FROM WHICH THE PURCHASE
WAS MADE.

WHEREAS, the (city or town) of _____________ recognizes that legislation frequently referred
to as the Marketplace Fairness and Remote Transactions Parity Act (“This Legislation”) is being
considered by the United States Congress; and,

WHEREAS, similar legislation was considered by the Arkansas General Assembly during
the 2017 regular legislative session1; and,

WHEREAS, this legislation would give states the authority to enforce local and state taxes
that are already in place and owed by out-of-state online retailers; and,

WHEREAS, this legislation would require retailers to collect and remit sales tax to state and
local governments for out-of-state online sales; and,

WHEREAS, all businesses, regardless of their physical location, should be required to
collect and remit state and local sales tax; and,

WHEREAS, the playing field, as it currently stands, favors out-of-state internet retailers that
exploit a pre-internet loophole, allowing them to evade collecting state and local sales tax even
though they sell the same products in the same communities as local merchants do; and,

WHEREAS, as it currently stands, stores with a local retailer must collect sales tax while
online stores do not, thereby enabling online stores to undercut local retail prices; and,

WHEREAS, this legislation is not a new tax or a tax increase, but rather enables states to
collect taxes that are already due; and,

WHEREAS, this legislation would generate more sales, pay more sales tax to the state
treasury, encourage more local retailers, create jobs for local workers and infuse more money into
local economies throughout the State of Arkansas.

NOW, THEREFORE BE IT RESOLVED BY THE (CITY OR TOWN) OF ____________,
ARKANSAS:

Section 1: That we do hereby urge members of the Arkansas Congressional Delegation and
the Arkansas Legislature to work for passage and vote in favor of legislation requiring the
collection and remittance of state and local sales tax by all retailers thus making for competition

1 Senate Bill 140 of 2017;
http://www.arkleg.state.ar.us/assembly/2017/2017R/Pages/BillInformation.aspx?measureno=SB140
in a true free market and giving every business an equal opportunity to compete, innovate and create jobs.

Section 2: Moreover, we do hereby urge Governor Asa Hutchinson to call for a special session as quickly as possible to address this most important issue for the benefit of the state’s local retail businesses and its citizens.

______________________________  APPROVED  ______________________________

Date Adopted                     Mayor

ATTEST: ________________________

Recorder or City Clerk
Push for Marketplace fairness/e-fairness

- This Resolution implores the Governor to call a special session that will support local businesses by giving them a fair chance to compete.

- Because there’s been no Congressional action, state legislatures introduced 46 bills related to e-fairness in 20 states during 2016.

- Many states have passed legislation that now allows for the collection of Internet sales tax.

- This is NOT a new tax. Lawfully, Arkansas residents are required to report the amount of money purchased for online items annually. However, this law is not being enforced currently.

- Last year, approximately 70 Arkansans reported the amount of money spent for online purchases on their tax returns. (There are approximately 3 million residents in Arkansas.)

- States have waited for more than 25 years for Congress to act. Nothing has taken place and in the meantime, Arkansas cities alone are losing approximately $25 million dollars annually because there is no procedure in place to collect online sales tax. (This is a very conservative dollar figure.)

- It’s time for the state of Arkansas to do what’s best for our state, our counties and our cities and towns. With that $25 million dollars the cities and towns would receive, many services can continue to be provided and can be enhanced for your citizens. (public safety, public transportation, infrastructure, etc.)

- When you don’t support your brick-and-mortars, you’re putting your “community” in jeopardy. (sense of community, sense of place, senses of pride—jobs, property value, quality of living)

- If you look at current May’s sales tax receipts in Arkansas, receipts were up 7.2% over last year because of Amazon’s voluntary collection of sales tax. Looking at June’s receipts, city sales taxes were up 6% because of Amazon’s voluntary collection of sales tax.

- Over 50 cities and towns in Arkansas have adopted the Resolution as of now and the number is continuing to grow.
Retail supports 1 in 4 American jobs. Traditionally, retailers add nearly 4 jobs for every million dollars of increased sales. Online-only retailers add just 1 job for every million dollars of sales.

93% of Americans say local retailers are important to their community’s economic health.

E-fairness is critical to the survival of small businesses. 95% of small businesses operate just 1 location and employ fewer than five employees. (these small businesses are the backbone of America’s economy)

E-fairness could increase the GDP by $563.2 billion and add more than 1.5 million jobs over the next 10 years.

The information above can be found on www.efairness.org if your citizens want to know the source of the information.